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No. 793

In the Supreme Court of the United States

OCTOBER TERM, 1945

PAUL A. PORTER, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, PETITIONER

v.

WARNER HOLDING COMPANY, A CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE PETITIONER

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OPINIONS BELOW

The opinion of the District Court (R. 19–28) is reported at 60 F. Supp. 513. The opinion of the Circuit Court of Appeals (R. 49–53) is reported at 151 F. 2d 529.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on October 31, 1945 (R. 54). The petition for a writ of certiorari was filed in this Court on January 30, 1946 (R. 54). Certiorari was granted on March 11, 1946. The jurisdiction of

this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the power of a court under Section 205 (a) of the Emergency Price Control Act to issue an injunction or "other order" to enforce compliance with the Act, where a person has engaged in acts constituting a violation thereof, includes the power to order restitution of overcharges made by a seller or landlord.

STATUTE INVOLVED

The statute involved is the Emergency Price Control Act of 1942 (56 Stat. 23, as amended by the Stabilization Extension Act approved June 30, 1944, 58 Stat. 632, 50 U. S. C. App., Supp. IV, 901 *et seq.*).

Pertinent provisions of the original Act are as follows:

Section 4 (a)—

> It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accomodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accord-

ance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (2) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

Section 205 (a)—

Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

Section 205 (e)—

If any person, selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices the person who buys such commodity for use or consumption other than in the course of trade or business may bring an action either for $50 or for treble the amount by which the consideration exceeded the applicable maximum price, whichever is the greater, plus reasonable attorney's fees and costs as determined by the court. For

the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be. If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or prices and the buyer is not entitled to bring suit or action under this subsection, the Administrator may bring such action under this subsection on behalf of the United States.

Section 205 (e) as amended by the Stabilization Extension Act, approved June 30, 1944, 58 Stat. 632, 640–641, 50 U. S. C. App., Supp. IV, 925 (e), provides:

If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may, within one year from the date of the occurrence of the violation, except as hereinafter provided, bring an action against the seller on account of the overcharge. In such action, the seller shall be liable for reasonable attorney's fees and costs as determined by the court, plus whichever of the following sums is the greater: (1) Such amount not more than three times the amount of the overcharge, or the overcharges, upon which the action is based as the court in its discretion may determine, or (2) an amount not less than

$25 nor more than $50, as the court in its discretion may determine: *Provided, however,* That such amount shall be the amount of the overcharge or overcharges or $25, whichever is greater, if the defendant proves that the violation of the regulation, order, or price schedule in question was neither wilfull nor the result of failure to take practicable precautions against the occurrence of the violation. For the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be; and the word "overcharge" shall mean the amount by which the consideration exceeds the applicable maximum price. If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices; and the buyer either fails to institute an action under this subsection within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the action, the Administrator may institute such action on behalf of the United States within such one-year period. If such action is instituted by the Administrator, the buyer shall thereafter be barred from bringing an action for the same violation or violations. Any action under this subsection by either the buyer or the Administrator, as the case may be, may be brought in any court of competent jurisdiction. A

judgment in an action for damages under this subsection shall be a bar to the recovery under this subsection of any damages in any other action against the same seller on account of sales made to the same purchaser prior to the institution of the action in which such judgment was rendered.

Section 108 (c) of the Stabilization Extension Act of 1944 provides as follows:

> The amendment made by subsection (b) [to Section 205 (e), *supra*], insofar as it relates to actions by buyers or actions which may be brought by the Administrator only after the buyer has failed to institute an action within thirty days from the occurrence of the violation, shall be applicable only with respect to violations occurring after the date of enactment of this Act. In other cases, such amendment shall be applicable with respect to proceedings pending on the date of enactment of this Act and with respect to proceedings instituted thereafter.

STATEMENT

Respondent, Warner Holding Company, is the owner of eight apartment buildings in the City of Minneapolis, containing an aggregate of approximately 280 dwelling units. Between November 1, 1942 and June 29, 1943 (the date on which a temporary injunction was issued herein), it demanded and received rents in excess of those permitted by the applicable maximum rent regulations issued

under the Emergency Price Control Act.[1] (R. 20–25, 28–30.) Respondent having refused to comply with the Act and the regulations, petitioner on February 13, 1943 (R. 50), brought this action to restrain the respondent from continuing to violate them. The complaint was later amended to seek a decree requiring respondent to tender refunds to its tenants of the excess of the rents which it had collected over the legal maximum (R. 2–5, 18–19).

The District Court granted an injunction against respondent's continued violation of the Act and regulation but declined to order restitution (R. 27–28, 32). The Circuit Court of Appeals affirmed the judgment (R. 53). Both the District Court (R. 28) and the Circuit Court of Appeals (R. 53) rested their decisions on the ground that they were without power to order restitution.

SPECIFICATION OF ERRORS TO BE URGED

1. The court below erred in holding that Section 205 (a) does not empower a court to grant restitution of overcharges as a means of enforcing compliance with the Act.

2. The court below erred in affirming the judgment of the District Court insofar as it denied an order for restitution.

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[1] Maximum Rent Regulation 53 (7 F. R. 8596) and the Rent Regulation for Housing (8 F. R. 7322). The former regulation became effective November 1, 1942, and continued in effect until June 1, 1943, when it was superseded by the latter regulation.

SUMMARY OF ARGUMENT

Section 205 (a) of the Emergency Price Control Act authorizes an appropriate court, upon application by the Administrator, to issue an injunction "or other order" enjoining violations of the Act or "enforcing compliance" with it. Both the terms of the statute, confirmed by its legislative history, and the general powers of a court of equity, which the statute invokes (*Hecht Co.* v. *Bowles*, 321 U. S. 321, 329), authorize a court at the suit of the Administrator to enforce compliance by requiring a violator to refund illegal exactions. Such an order is as definitely contemplated by the statute and is as much a part of the traditional equitable powers as is a prohibitory decree. The effect of the decision below is to make this remedy unavailable and to threaten the vitality of judicial enforcement of other federal statutes, contrary to the principle that a court of equity, when called upon to protect an important public interest, is required to frame its decree so as to effectuate the objectives of the applicable legislation.

The power to require affirmative action, including restoration by means of money payments, has long been established. Although in some of the cases this power was exercised to undo the effects of contempt of a court's previous decree, the same principle is applicable and has been ap-

plied where a positive statutory command or administrative order has been violated.

The presence of Section 205 (e) in the Act, whereby a consumer who has been overcharged may bring an action for treble damages, does not negative the power of the Administrator to seek an order of restitution in an enforcement proceeding. The consumer's damage action, while it was created in order to aid in the enforcement of the Act, vindicates primarily a private right bestowed by the statute. The Administrator, on the other hand, seeks the vindication of the public interest, which may require restitution of illegal exactions. The two remedies are consistent, but distinct.

The 1944 amendment to Section 205 (e) which permits the Administrator to sue for damages for overcharges where tenants or purchasers fail to sue within thirty days does not indicate that the Administrator's power to compel restitution did not previously exist or operate to withdraw that remedy. The precedents relied upon by the court below with reference to the exclusiveness of statutory remedies under certain circumstances, do not support the court's conclusion.

ARGUMENT

The Power Granted the Courts Under Section 205 (a) of the Emergency Price Control Act To Issue an Injunction or "Other Order" "Enforcing Compliance" With the Act Includes the Power To Order Restitution of Overcharges Made by a Seller or Landlord

A. The Language and Legislative History of Section 205 (a) Indicate a Clear Intent on the Part of Congress To Invoke the Traditional Comprehensive Powers of Courts of Equity in Aid of Enforcement

The Emergency Price Control Act was enacted in order, among other purposes, "to stabilize prices" and eliminate "profiteering" (56 Stat. 23, 50 U. S. C. App., Supp. IV, 901). Section 2 of the Act directs the Administrator to promulgate regulations fixing maximum prices for commodities and maximum rental rates for housing accommodations, and Section 4 (a) makes it unlawful for any seller or landlord to exact a price or rent in excess of the maximum price or rent fixed by the applicable regulation.

By Section 205 (a) of the Act, the Price Administrator is authorized to apply to any court of competent jurisdiction for an order "enjoining" violations of the Act and pertinent regulations or for an "order enforcing compliance" with the Act. Upon a showing by the Administrator that persons are violating or are about to violate the Act, the Court may issue "a permanent or temporary injunction, restraining order, or other order" without bond.

Contrary to the view of the court below, Section 205 (a) appears broadly to authorize courts of

equity to issue any prohibitory or mandatory order found necessary to bring about compliance with the Act. The section grants separate authority to enjoin and to issue other orders, thereby clearly indicating that the power is more than one of enjoining future violations. If a violator is permitted to reap the benefits of his wrongdoing, compliance is not achieved even though he is restrained from future violations. Compare *United States* v. *Crescent Amusement Co.*, 323 U. S. 173, 189. The statute is designed to prevent such an outcome.

Congress clearly intended that the term "other order" as used in Section 205 (a) should be construed in its broadest sense. The Senate Committee on Currency and Banking stated in its report upon the bill which became the Emergency Price Control Act:

> In common with substantially all regulatory statutes, the bill authorizes the official charged with the duty of administering the act to apply to any appropriate court, State or Federal, for an order enjoining any person who has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of the bill. *Such courts are given jurisdiction to issue whatever order to enforce compliance is proper in the circumstances of each particular case.* [Emphasis added.] S. Rep. No. 931, 77th Cong., 2d sess., p. 10.

"The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case" (*Hecht Co.* v. *Bowles*, 321 U. S. 321, 329). It is clear that Congress intended to invoke that jurisdiction broadly and thus to make available the full range of the courts' equitable powers in enforcement proceedings. "In fact there is no limit to the various forms and kinds of specific remedy which [the Chancellor] may grant, adapted to novel conditions of right and obligation, which are constantly arising from the movements of society" 1 Pomeroy, *Equity Jurisprudence* (5th ed.) § 60. Compare *Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U. S. 177, 194.

This Court in *Hecht Co.* v. *Bowles*, 321 U. S. 321, construed the words "other order" in Section 205 (a) to authorize an order different from an injunction or restraining order. A decree such as the court below refused to issue comes, we submit, within the authority thus recognized, and such an order should issue in an appropriate case because of the responsibility which the court shares with the Administrator to carry on the war against inflation (321 U. S. 331) and to exercise its "discretion under § 205 (a) * * * in light of the large objectives of the Act" (*ibid.*). Such orders are necessary to undo the inflationary effects of violations, by preventing the economic pressures which the unlawful exactions otherwise set

up. The comprehensive scheme for controlling inflation, eliminating profiteering, and preventing price spirals would be incomplete if this remedy were withheld.[2]

The effect of the decision below is to make unavailable a traditional equitable remedy, restoration of the status quo, in the enforcement of the Emergency Price Control Act. If permitted to stand, the decision may, moreover, affect the vitality of similar enforcement powers under other Federal statutes of public importance.[3] The decision below is in direct conflict with *Bowles*

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[2] S. Rep. No. 931, 77th Cong., 2d sess., at p. 2, points out that:

"Rising prices and increases in the cost of living bring misery to our people, cause industrial unrest, and undermine our unity. Since prices do not advance at the same rate for all commodities, and living costs tend to rise more quickly than wages, the burdens of war are haphazardly distributed, with the heaviest burden on the farmer, the salaried worker, the small investor, the pensioner, and the veteran, whose incomes cannot readily be expanded. Rising living costs mean labor disputes and spiraling wage demands. And the suspicion of profiteering causes discontent which hampers production as surely as the bombing of factories."

To cope with the problems thus summarized, the Emergency Price Control Act was enacted "* * * to eliminate and prevent profiteering * * * to protect persons with relatively fixed and limited incomes, consumers, wage earners, investors, and persons dependent on life insurance, annuities, and pensions, from undue impairment of their standard of living * * *" (§ 1).

[3] For example, the Fair Labor Standards Act, 52 Stat. 1069, 29 U. S. C. 217; the Sherman Act, 26 Stat. 1167, 15 U. S. C. 4; the Securities Act of 1933, 48 Stat. 86, 15 U. S. C. 77t (b); the

v. *Skaggs*, 151 F. 2d 817, in which the Circuit Court of Appeals for the Sixth Circuit held that under Section 205 (a) the court may at the suit of the Administrator order restitution. It is also inconsistent with *Walling* v. *O'Grady*, 146 F. 2d 422, in which the Circuit Court of Appeals for the Second Circuit held that a court may at the suit of the Wage and Hour Administrator grant similar relief under the Fair Labor Standards Act, which is less specific than Section 205 (a), simply authorizing the Federal district courts to restrain violations (52 Stat. 1060, 1069, 29 U. S. C. 217). The decision below also appears to run contrary to the salutary principle that a court of equity under a statute enacted to protect an important public interest need not limit its decree to prohibitions, but is "bound to frame its decree so as to suppress the unlawful practices and to take such reasonable measures as would preclude their revival." *Ethyl Gasoline Corporation* v. *United States*, 309 U. S. 436, 461. The test is the effectuation of the statutory policy. *United States* v. *Crescent Amusement Co.*, 323 U. S. 173, 189; *United States* v. *Bausch & Lomb Optical Co.*, 321 U. S. 707, 726; *Walling* v. *Miller*, 138 F. 2d 629, 633, concurring opinion of

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Securities Exchange Act of 1934, 45 Stat. 899, 15 U. S. C. 78u (e); the Federal Power Act, 49 Stat. 861, 16 U. S. C. 825m; the Public Utility Holding Company Act, 49 Stat. 831, 15 U. S. C. 79r (f); the Natural Gas Act, 52 Stat. 833, 15 U. S. C. 717u.

Woodrough, J. (C. C. A. 8), certiorari denied, 321 U. S. 784; *Fleming* v. *Alderman*, 51 F. Supp. 800 (D. Conn.). Compare *Virginia Electric & P. Co.* v. *National Labor Relations Board*, 319 U. S. 533, 541.

The power of an equity court to require affirmative action by an order designed to restore the status quo has long been established. *Texas & N. O. R. R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548; *Texas & N. O. R. R. Co.* v. *Northside Ry. Co.*, 276 U. S. 475, 479; *Jones* v. *Securities & Exchange Commission*, 298 U. S. 1, 15–18. The Court has the power, for example, to require a building to be set back to conform to an ordinance (*Welton* v. *40 E. Oak St. Bldg. Corp.*, 70 F. 2d 377 (C. C. A. 7), certiorari denied, 293 U. S. 590), to require one to send out letters corrective of letters previously sent out containing false statements (*Vaughan* v. *John C. Winston Co.*, 83 F. 2d 370 (C. C. A. 10)), to require contracts to be cancelled and access given to books and records (*United States* v. *Bausch & Lomb Optical Co.*, 321 U. S. 707), to require the dissolution of a combination (*United States* v. *Union Pacific R. R.*, 226 U. S. 61), to require stock held by a holding company to be distributed to its stockholders (*Standard Oil of New Jersey* v. *United States*, 221 U. S. 1, 77–82), to prescribe the disposition of patents and leased property unlawfully acquired (*Hartford-Empire Co.* v. *United States*, 323 U. S.

386), and, under Sec. 205 (a) of the Emergency Price Control Act, where a tenant has been wrongfully evicted, to require the landlord to restore the status quo by offering the premises to the tenant (*Henderson* v. *Fleckinger*, 136 F. 2d 381 (C. C. A. 5). Pecuniary relief is authorized in the exercise of the court's equity power as an incident of the power to give complete relief. High, *Injunctions* (4th ed.) § 669; 1 Pomeroy, *Equity Jurisprudence*, §§ 231, 237; *The Salton Sea Cases*, 172 Fed. 792 (C. C. A. 9), certiorari denied, 215 U. S. 603; *Kinney-Coastal Oil Co.* v. *Kieffer*, 277 U. S. 488, 507. Compare *Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U. S. 177, 197; *Agwilines* v. *National Labor Relations Board*, 87 F. 2d 146, 150–151 (C. C. A. 5).

It is true that in some of the cases the asserted power to restore the status quo was discussed or exercised because of contempt of the court's previous decree (*Texas & N. O. R. R. Co.* v. *Brotherhood of Railway Clerks, supra*) or on the ground that since the filing of the bill in equity the defendant had engaged in the acts sought to be enjoined (*Texas & N. O. R. R. Co.* v. *Northside Ry. Co., supra*; *Jones* v. *Securities & Exchange Commission, supra*; *Henderson* v. *Fleckinger, supra*.). But, granted the power of equity to afford this complete relief, it is brought into play as well by a violation of a positive

statutory command or equivalent administrative order, such as occurred in the *O'Grady, 40 E. Oak St.*, and *Winston* cases, *supra*.

These remedial powers may be exercised with particular appropriateness where the public interest is involved; for "Courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved." *Virginian Ry. Co.* v. *System Federation*, 300 U. S. 515, 552. The appropriateness of awarding pecuniary relief in a situation analogous to the present one has been aptly summarized in *Walling* v. *O'Grady, supra*, where the court said at p. 423:

> It is probable that the employee could have brought an individual action for loss of wages but such an action would not furnish a remedy adequate for such cases. The amount involved ordinarily would be small and the expense of recovery disproportionate and it seems more in accord with the spirit of sound labor legislation to allow the Administrator to restore all the rights of an employee in a single action instead of requiring one action for an injunction and reinstatement by the Administrator and another by the employee for loss of ad interim wages. We can see little difference between giving reparation to an employee for loss of wages as anciliary to injunctive

relief against withholding employment and giving back pay where an injunction for reinstatement has been violated as the court did in *Texas & N. O. R. Co.* v. *Brotherhood of Ry. Clerks*, 281 U. S. 548, 50 S. Ct. 427, 74 L. Ed. 1034. Cf. *Phelps Dodge Corporation* v. *National Labor Relations Board*, 313 U. S. 177, 188, 61 S. Ct. 845, 85 L. Ed. 1271, 133 A. L. R. 1217. In each case such reparation is necessary to restore the status quo interfered with by the unlawful conduct of the employer and in neither case is there a statutory mandate spelling out all the details of relief necessary for the purpose in hand. In *Texas & N. O. R. Co.* v. *Brotherhood of Ry. Clerks, supra*, back pay was allowed as an inherent power of a court of equity necessary in order to enforce an injunction. In the case at bar it would seem to be a necessary power adequately to carry out the prohibition of the Fair Labor Standards Act against a discriminatory discharge.

It results from the foregoing that a district court in the exercise of its traditional powers can order restitution in a case such as the present; that there is nothing in Section 205 (a) which reflects an intention on the part of Congress to restrict such powers; and that, on the contrary, it was the intent of Congress to afford full opportunity to a court of equity to treat enforcement proceedings under Section 205 (a) of the Act in such a

way as will be most responsive to the needs of the public in preventing inflation.

B. The Action for Statutory Damages Conferred Upon Purchasers and Tenants by Section 205 (e) of the Act Does Not Manifest a Congressional Intent To Restrict the Power of a Court of Equity To Order Restitution at the Suit of the Price Administrator Under Section 205 (a)

The right to compel restitution is wholly separate and distinct from the right granted to purchasers and tenants to recover damages under Section 205 (e). Proceedings under Section 205 (a) afford "a full opportunity for equity courts to treat enforcement proceedings under this emergency legislation in accordance with their traditional practices, as conditioned by the necessities of the public interest which Congress has sought to protect" *Hecht Co.* v. *Bowles*, 321 U. S. 321, 330. When the Administrator applies for an order of restitution to compel compliance, he seeks the vindication of public rights; not the redress of a private wrong. On the other hand, when an aggrieved purchaser or tenant seeks treble damages under Section 205 (e), he seeks the vindication of a private right bestowed upon him by the statute, not primarily the redress of a public wrong. "The Administrator acts in the public interest—the purchaser in his own. The remedies are not irreconcilable" *Bowles* v. *Skaggs*, 151 F. 2d 817, 821 (C. C. A. 6). In allowing treble damages to an aggrieved litigant, Congress was merely

adopting a familiar technique which appears in other regulatory statutes. "They [actions for treble damages] afford a remedy at law to persons damaged by having had to pay unlawfully high prices." (S. Rep. No. 931, 77th Cong., 2d Sess. (1942), p. 9.) "It was written into the statute because the Congress recognized the practical need of this aid to enforcement." (S. Rep. No. 922, 78th Cong., 2d Sess. (1944), p. 14.)

The distinction between remedies created by statute for the vindication of public rights at the suit of a public officer or agency and those provided for the redress of private wrongs at the suit of injured parties is a fundamental one. The agency created by statute to represent the public interest is entitled to invoke the full powers vested in the courts in order to achieve the purposes of the statute with the enforcement of which it has been entrusted. That the Act also accords remedies to private individuals is immaterial. A private individual asserts primarily a private right. The agency on the other hand represents the public interest directly, and that public interest is promoted by the issuance of affirmative orders enforcing compliance by compelling the undoing of past violations as well as by the prevention of future violations. *Virginia Electric & Power Co.* v. *National Labor Relations Board*, 319 U. S. 533, 543; *National*

Labor Relations Board v. *Jones and Laughlin Steel Corporation*, 301 U. S. 1, 48; *Walling* v. *O'Grady*, 146 F. 2d 422 (C. C. A. 2); *Walling* v. *Miller*, 138 F. 2d 629, 633, concurring opinion by Woodrough, J. (C. C. A. 8), certiorari denied, 321 U. S. 784; *Office of Price Administration* v. *Georgian Hotel Co.*, 60 F. Supp. 155 (D. Mass.).

There is nothing in the legislative history of Section 205 (e) to indicate that Congress intended to restrict courts of equity in the exercise of their traditional powers and such restriction should not be "lightly implied". *Hecht Co.* v. *Bowles*, 321 U. S. 321, 330. Indeed, the legislative history of Section 205 (e) establishes that Congress intended to provide an action at law for aggrieved purchasers and tenants to lighten the burden of enforcement.[4] To deprive the Administrator of the opportunity of enforcing compliance by restoration of the status quo is to increase the burden of enforcement, not to lighten it. Purchasers and tenants often are unwilling either to assume the cost and risk of litigation, or to incur the hostility of a seller or landlord, as the case may be, upon whom they are dependent for the further supply of goods or for the peaceful enjoyment of premises.[5] The result is

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[4] S. Rep. No. 922, 78th Cong., 2d sess., p. 14; S. Rep. No. 931, 77th Cong., 2d sess., pp. 9–10.

[5] The hostility of the landlord in this case was amply demonstrated (R. 22–24, 30, 39).

that the remedy granted them may be found wanting to protect the public interest in a large class of cases in which strict enforcement is most gravely needed. The order for restitution may be the only practical sanction available to the Administrator. *Bowles* v. *Skaggs*, 151 F. 2d 817 (C. C. A. 6).

Nor does the fact that Section 205 (e) was amended by the Stabilization Extension Act of 1944, so as to permit the Administrator to sue to recover damages for overcharges in cases where the tenant or purchaser fails to sue within 30 days, either indicate that the remedy of compelling restitution did not previously exist or operate to withdraw that remedy. Nothing in the amendment to Section 205 (e) or its legislative history justifies the assumption that Congress intended to restrict the powers of courts under Section 205 (a). Moreover, as the court pointed out in *Bowles* v. *Skaggs*, 151 F. 2d 817 (C. C. A. 6), an order of restitution is not a judgment for damages or for penalties. The recovery which the Administrator may obtain under Section 205 (e) if a purchaser or tenant fails to sue is a judgment for statutory damages. Such a recovery is distinct from an order of restitution to the overcharged tenant, which compels compliance by restoration of the status quo and falls within the recognized power of a court of equity.

Nothing but the clearest Congressional expression would justify the view that a court of equity could no longer deal fully and effectively with a violator, enjoin future violations, and order refunds of overcharges to purchasers and tenants.

The rule relied on heavily by the court below "that where a statute creates a right and provides a special remedy, that remedy is exclusive," and the cases cited by the court in support of the rule, are not apposite. *United States* v. *Babcock*, 250 U. S. 328, involving the exclusiveness of a statutory administrative remedy, is not applicable here, nor is *Hassel* v. *United States*, 34 F. 2d 34, 36 (C. C. A. 3), in which the Government did not invoke the general equity powers of the court. In *Decorative Stone Co.* v. *Building Trades Council*, 23 F. 2d 426 (C. C. A. 2), certiorari denied, 277 U. S. 594, the company sought an injunction under the Clayton Act (38 Stat. 737, 15 U. S. C. 26) and triple damages in the same suit. The court held that since the damages were penal and were separately recoverable under Section 15 of the Act, they could not be recovered in an equity suit, and that a non-statutory recovery of damages could not be had. In that case, however, an injured person was seeking private redress. Since the statute provided two separate remedies for the injured individual, the court properly held these remedies to be exclusive. In the instant

case the overcharged tenants for whom restitution is sought are not seeking treble damages under Section 205 (e); the Administrator in order to enforce compliance is asking to have the unlawful overcharges restored for public reasons, as well as for injunctive relief against future wrongs. *Globe Newspaper Co.* v. *Walker*, 210 U. S. 356, relied on by the court, held only that the remedies of forfeiture and penalty and of injunction, given by statute to the owner of a copyrighted map, precluded resort to an action at law to recover the damages sustained by reason of an infringement.

The statement by the court below that it could not "enlarge the statutory scheme of enforcement", assumes erroneously that the powers vested in courts of equity under Section 205 (a) do not include the power to restore the status quo. The breadth of the equitable remedy made available by the statute here has, we believe, been amply demonstrated. Nothing in the cases cited by the court supports the view that a court of equity under Section 205 (a), in enforcing a statute of great public purpose, is shorn of its power to order restitution because aggrieved persons are provided in the same Act with the means of recovering statutory damages.

CONCLUSION

We respectfully submit that the judgment should be reversed and the cause remanded for further proceedings.

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